

# APPENDIX

PART 3 OF 7

1           IN THE UNITED STATES DISTRICT COURT  
2           MIDDLE DISTRICT OF FLORIDA

3           CASE NO.: 3:04-CV-146-V-99HTS

4           SEA STAR LINE, LLC,  
5           a limited liability company,

6                 Plaintiff,

7                 vs.

8           EMERALD EQUIPMENT LEASING, INC.,  
9           a corporation,

10              Defendant.

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11              ORIGINAL

12              Deposition of **ANDREW ROOKS**, taken on behalf  
13           of the Defendant, pursuant to Notice of Taking Deposition  
14           in the above-entitled action, on Friday, January 14,  
15           2005, at 9:10 a.m., at the office of Powers Reporting,  
16           220 East Forsyth Street, Jacksonville, Florida, before  
17           Susan Taylor, a Court Reporter and a Notary Public in and  
18           for the State of Florida at Large.

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1 taking any particular equipment as an example?

2 MR. ARMSTRONG: Object to the form.

3 A Well, the date of the agreement, I think, was  
4 effective April 29th of 2002.

5 Q And when would you begin incurring rental  
6 charges with respect to any particular piece of  
7 equipment?

8 MR. ARMSTRONG: Object to the form.

9 A Once we -- under the terms of the agreement,  
10 once we used the equipment to move cargo is when we  
11 consider the equipment to start -- you know, coming on  
12 the clock.

13 Q Does the term on-hire, is that meaningful to  
14 you?

15 A Yes.

16 Q Okay. And is that what you mean when you say  
17 on the clock, on-hire?

18 A Yes.

19 Q If you move the equipment for reasons other  
20 than to move cargo, repositioning empties, would that  
21 start the on-hire period?

22 A If we move the equipment and reposition an  
23 empty after we had on-hired it, used it, we would be  
24 responsible for that per diem on that equipment till we  
25 terminated -- until it was terminated.

1 A In general, yes.

2 Q Is it a term that you use in your business?

3 A Yes.

4 Q With respect to this lease if any of the  
5 Emerald equipment was idle, did that impact on the  
6 charges being incurred by Sea Star for use of the  
7 equipment?

8 MR. ARMSTRONG: Object to the form.

9 A Not necessarily.

10 Q Does the term J lot mean anything to you?

11 A Yes.

12 Q What does that mean to you?

13 A The J lot was an area on our terminal in San  
14 Juan where we would reposition and store the Emerald  
15 equipment after it came in our gate once we determined we  
16 were not going to reuse it.

17 Q Does the term showroom lot mean anything to  
18 you?

19 A Yes.

20 Q What does that mean?

21 A The showroom was a lot just adjacent to our  
22 terminal in San Juan where we returned Emerald equipment.

23 Q Is there a difference between the J lot and  
24 the showroom lot other than the physical -- physically  
25 where they are?

1 A No, not really.

2 Q Is it your testimony that all equipment that  
3 went into the J lot once it went there was never again  
4 used by Sea Star?

5 MR. ARMSTRONG: Object to the form.

6 A That was the intent.

7 Q Do you know if in practice that was what  
8 occurred?

9 A The intent was to move the equipment over to  
10 the J lot and the intent was not to use it again.

11 Q I'll show you a document that was marked as  
12 Defendant's Exhibit 14. This is an e-mail from Lisa  
13 Florence to you.

14 A Okay.

15 Q The list of equipment -- assume that the list  
16 of equipment that's here had been used by Sea Star. When  
17 she says these should be moved to J lot for off-hire,  
18 does the movement to J lot in and of itself terminate Sea  
19 Star's obligation to pay rent for the equipment?

20 MR. ARMSTRONG: Object to the form.

21 A If we had used this equipment and were  
22 responsible for per diem charges then by moving to the J  
23 lot would nothing more -- would mean nothing more than  
24 just moving it off of our main terminal and getting it  
25 over to the J lot to ensure that we wouldn't use it

1 because of the sequence of the -- the way the IQSHIP  
2 program is configurated.

3 Q So what would happen to a piece coming into  
4 the gate that -- where there wasn't an on-hire move  
5 preceding it?

6 A Well, we had to force an on-hire move and  
7 then a minute later force the received -- empty order  
8 receive, full move, into the computer.

9 Q What type of moves would create an entry into  
10 the IQSHIP system?

11 A A received empty move, a received full move.

12 Q How about the other way, gate outs?

13 A Yes, a gate out move, sent out, empty, sent  
14 out full move.

15 Q With respect to just the gates in, gates out,  
16 would there be a TIR for each of those moves?

17 A There should be, yes.

18 Q Are there other documents other than TIRs  
19 that evidence equipment moves?

20 A Yes.

21 Q I'm going to show you a document and ask you  
22 if you can tell me what that is.

23 A This is a cargo discharge document from one  
24 of the stevedore's in San Juan.

25 Q Is that a document that would be created for

1 Sea Star's usage?

2 A Yes.

3 Q And does that document indicate Emerald  
4 equipment being used?

5 A Yes. I see some Emerald equipment on here.

6 Q And is that the type of document that could  
7 also evidence the usage of Emerald equipment by Sea Star?

8 A Yes.

9 Q How would that information be inputted into  
10 the IQSHIP?

11 A Well, without looking at the individual  
12 history of these units, hopefully, if these units were --  
13 hopefully, these units were on-hired in our system before  
14 the -- if they, indeed, were used by Sea Star, but before  
15 they were discharged off this vessel. And then the  
16 particular move whether it's a discharged or sent forward  
17 or a reposition move would be subsequent to that based on  
18 this document.

19 Q Is there a procedure established at Sea Star  
20 to review these documents as they're received in order to  
21 assure that the equipment usage has been recorded in the  
22 IQSHIP system?

23 A Yes.

24 Q Who at Sea Star would be obligated to make  
25 that review?

1           A     For this particular document, it would have  
2 been our equipment folks in San Juan.

3           Q     Who is there?

4           A     It's headed up by Ricardo Diaz.

5           Q     Do you recall ever receiving reports from  
6 Mr. Diaz indicating that he is located equipment, that it  
7 was being moved, but not in the IQSHIP system?

8           A     I can't recall.

9           Q     We have looked at TIRs and we've looked at  
10 load discharge summaries, are there -- is there any other  
11 type of document that Sea Star would receive which would  
12 indicate a move of equipment?

13          A     Yes.

14          Q     What other documents might there be?

15          A     We were using gate logs, for example, out of  
16 our facility up in Elizabeth, New Jersey.

17          Q     Was there a person responsible for inputting  
18 the information from gate logs into the IQSHIP system?

19          A     Yes.

20          Q     Who was that?

21          A     Early on George Cervone was at that facility  
22 and also Frank Pagano, P-a-g-a-n-o.

23          Q     Were there other documents used by Sea Star  
24 to evidence usage of equipment?

25          A     We would receive faxes or e-mails from our

1 inland depots that would show inbound and outbound gate  
2 activity for that particular day.

3 Q Any other documents?

4 A I can't think of any more.

5 Q Would a ship manifest indicate usage of  
6 Emerald equipment?

7 A Sure.

8 Q And did Sea Star regularly review ship  
9 manifests to determine whether the equipment recorded on  
10 the manifest was in the IQSHIP system?

11 A If it was on the manifest it would have been  
12 in the IQSHIP system.

13 Q Could you explain -- if I showed you examples  
14 where they're on the manifest but not in the self-billing  
15 reports, would you have an explanation for that?

16 A Possibly. I'd have to look at them.

17 Q I'll show you what was marked as Florence 10,  
18 11, 12, and 13. It's at the bottom of the pile right in  
19 front of you.

20 A 10 --

21 Q 11, 12, and 13.

22 A Thank you. Okay.

23 Q And I will represent to you, so that I can  
24 save you some time, that this is a ship manifest. The  
25 highlighted items are Emerald equipment that appear on

1 the ship manifest for both the northbound and southbound  
2 voyage of the ship in question. And behind that are your  
3 self-billing reports for the two-month period covered by  
4 the ship manifest.

5 A Okay.

6 Q If you'll assume for me that we have  
7 accurately reviewed these and that these pieces of  
8 equipment are not on the self-billing report, even though  
9 they are on the ship manifest, could you tell me how that  
10 could have occurred?

11 MR. ARMSTRONG: Object to the form.

12 A Again, without looking at the history of the  
13 unit and assuming that you guys have done that research,  
14 I don't have a particular explanation on this other than  
15 it possibly was missed.

16 Q Well, how could it be missed? Because wasn't  
17 your testimony that any piece of equipment that got on a  
18 ship would have to have an entry into the IQSHIP system?

19 A Could have had an entry into IQSHIP if it was  
20 inputted in the IQSHIP system at the time of on-hire  
21 improperly. The proper documentation required for the  
22 inputting of the on-hire wasn't done properly, then that  
23 unit would not have, for lack of a better word, spit out  
24 when the self-billing report was run against Emerald.

25 Q Any other explanation?

1 MR. ARMSTRONG: Object to the form.

2 A No, not that I can think of.

3 Q Have you or anyone under your command going  
4 through ship manifest to see if Emerald equipment has  
5 been -- let me rephrase that.

6 Have you personally or have you directed  
7 anyone to review ship manifests for the period covered by  
8 the equipment rental agreement to see if the IQSHIP  
9 system has included all usage of Emerald equipment?

10 A Yes.

11 Q When was that done?

12 A We did -- I did an analysis and it was in the  
13 fall of '03. I can't recall the exact date.

14 Q What exactly was done?

15 A We had run load summaries from April 27th  
16 through, I believe, August -- April 27th of '02 through  
17 August of '03, and tried to determine which Emerald-owned  
18 units were on those manifests -- excuse me, on those load  
19 summaries. And we did a little analysis to determine if  
20 there were units that we missed, if there's units that we  
21 didn't pay for that we possibly should have, things of  
22 that nature.

23 Q What did the analysis reveal?

24 A There were some monies owed based on our  
25 findings. I'm not sure what the final dollar amount was,

1 you have it somewhere.

2 Q You've used the term load summary and ship  
3 manifest almost interchangeably in your answer, is there  
4 a difference between those documents?

5 A You said ship manifest, I was saying load  
6 summary. There's a slight different, yes. The load  
7 summaries -- yes, there's a difference.

8 Q What is the difference?

9 A The load summaries are an equipment report  
10 that shows all the equipment whether it's empty or load  
11 moved on those particular vessels. It's more of a  
12 condensed version of a manifest that's used by  
13 equipment --

14 Q What was it that you reviewed, the load  
15 summary or the ship manifest?

16 A The load summaries.

17 Q I'll show you what was marked as Florence 1.  
18 It's right there.

19 A Yes.

20 Q Do you recognize this document? I will tell  
21 you that Lisa Florence identified this as summary sheets  
22 from a self-billing report.

23 A Yes. These are the front page of the  
24 detailed self-billing report that we sent to you.

25 Q Would you look at the third page, please.

1 A Yes.

2 Q Do you see the last entry, inland depots?

3 A Yes.

4 Q Can you explain why no inland depot moves  
5 appear on any of the preceding summary pages?

6 A No, I cannot.

7 Q From your experience, were there inland depot  
8 moves between the period of April 27th through May 31st  
9 with respect to Emerald equipment?

10 MR. ARMSTRONG: Object to the form.

11 A I would presume there would have been.

12 Q Is this another example where IQSHIP may not  
13 have had the information in order to create a  
14 self-billing report?

15 A That could be one example. Another -- that  
16 could be one example. I don't know if this inland depot  
17 on June -- I don't know if this was -- these amounts, if  
18 it's -- if it -- if the summary -- if the actual billing  
19 period is June 1st or June 30th. Any one of these units,  
20 whether it's inland depots or other locations, could be  
21 dollars that are owed going back to when we realized we  
22 did on-hired in the middle of May or end of May or  
23 something like that, that would be in the detail.

24 Q In any of your reviews of your self-billing,  
25 did you find examples where inland depot moves had not

1           A     We had asked him to find the supporting  
2 documents for the equipment that constituted our on-hire  
3 and/or our off-hire report.

4           Q     Do you know what he's been doing in order to  
5 accomplish that task?

6           A     He's been going through our TIR files in our  
7 office in Jacksonville to try to find these documents.

8           Q     Anything else?

9           A     No.

10          Q     Does he have access to IQSHIP?

11          A     No.

12          Q     Does he -- is he reviewing documents that are  
13 located anywhere else other than Jacksonville?

14          A     We had the TIR documents in San Juan sent to  
15 Jacksonville, so he was reviewing those TIR files. We  
16 had the gate logs from Elizabeth, New Jersey sent down to  
17 us, so he's been reviewing the gate logs. We had the --  
18 the e-mail notification from the inland depots or the  
19 faxes from the depots, he's been reviewing those -- those  
20 documents.

21          Q     At the time of the MPR acquisition, you held  
22 the same position with Sea Star that you do today?

23          A     Yes.

24          Q     Were you asked to consider how much equipment  
25 Sea Star would need in order to operate the ships it was

1 that you've learned from your review of your own  
2 documents?

3 MR. ARMSTRONG: Object to the form.

4 A No. I mean, it's what we think is factual  
5 information.

6 Q Do you recall whether the report reached the  
7 conclusion as to whether or not additional money was owed  
8 to Emerald?

9 A Yes, it did.

10 Q Do you recall how much?

11 A No, I do not. It's still actually ongoing,  
12 but, no, I do not recall.

13 Q Do you recall your last -- let me rephrase  
14 that.

15 What was the last amount you recall seeing as  
16 being owed to Emerald?

17 MR. ARMSTRONG: Object to the form.

18 A If I'm -- if -- if it's something I'm doing  
19 on behalf of counsel, am I allowed -- can I state that?  
20 Okay. I want to say --

21 MR. ARMSTRONG: Don't guess. If you recall,  
22 don't guess.

23 A I want to say I saw a number of \$180,000.

24 Q Has the updated version of Florence 7 been  
25 produced in response to discovery requests?

1 was there a conclusion that an additional \$157,215 was  
2 due and owing?

3 A Yes.

4 Q There's a report that's part of this Exhibit  
5 that comes right behind the first report, do you see  
6 that?

7 A Yes.

8 Q And at the bottom it says page 1 of 12?

9 A Yes.

10 Q What is this report?

11 A This was the more detailed report listing.  
12 The actual unit number showing the number of days and the  
13 per diem and the total amount.

14 Q Would it be fair to say each and every piece  
15 of equipment that's on this portion of the Exhibit was  
16 not found in IQSHIP?

17 A It was in IQSHIP, it was not on self-billing  
18 reports.

19 Q Can you explain how these units could have  
20 been in IQSHIP and not appear on the self-billing  
21 reports?

22 A Yes. Again, as I mentioned earlier, when we  
23 on-hire a document -- excuse me. When we on-hire a piece  
24 of equipment certain information has to be inputted into  
25 IQSHIP that refers to the leasing company, a release

1 reference code, things of that nature. If that -- if  
2 that information is not input correctly, when the  
3 self-billing report is run, you're asking for that  
4 particular companies account code, if it was not on-hired  
5 properly, then when the self-billing report is generated,  
6 it's going to miss units that were brought into the  
7 system against a flawed or a wrong reference code.

8 Q Are you're talking about a release reference?

9 A Yes, thank you.. Yes.

10 MR. SCHILDHORN: Off the record.

11 (Off-the-record discussion.)

12 BY MR. SCHILDHORN:

13 Q Have you seen an updated version of this  
14 portion of Cervone 16?

15 A No, this is the only one we ran.

16 Q Was there a minimum time period for the  
17 rental of each piece of Emerald equipment pursuant to the  
18 equipment rental agreement?

19 A Yes.

20 Q Was that 30 days?

21 A Yes.

22 Q Do you know why in calculating the amount  
23 owed for certain pieces of equipment a period of time of  
24 less than 30 days was used?

25 A No.

1 above and beyond what they had claimed on their  
2 spreadsheets. We did an analysis and determined that,  
3 yes, we possibly owe you -- them X amount of dollars more  
4 on the claim analysis. We did the -- the study on the  
5 load summaries to determine was there possibly more money  
6 we would owe them that -- that had not been claimed by  
7 Emerald on their claim analysis, so we were kind of  
8 separating the two. We knew we possibly owed money under  
9 the claim analysis above and beyond that we provided this  
10 report internally to see if there was more money that  
11 would be due to them that had not already been reported  
12 under the claim analysis.

13 Q Okay. And after the 70 page, there's another  
14 chart, what does that show?

15 A That's a chart that showed a breakdown by  
16 unit -- excuse me, by comments with the amount of units  
17 that were represented on those comments.

18 Q There's a total units of 5,482.

19 A Yes.

20 Q Does that represent the total units on all --  
21 of everyone's units on the ship or just the Emerald  
22 equipment?

23 A Just the Emerald equipment that sailed on  
24 those vessels from April of '02 to August of '03.

25 Q What does the next report show, 1 of 84?

1           A     This was the actual analysis. There was a  
2 breakdown by voyage and it listed the unit numbers, the  
3 Emerald units that sailed on that voyage, and then out to  
4 the right, the comment's that represented those units.  
5 This was more of an analysis done by voyage with the unit  
6 numbers in the comments.

7           Q     Okay. In the middle of the page, there's an  
8 indication that there's an amount due, but there's no  
9 comments to the right, do you see that?

10          A     Yes.

11          Q     What does that indicate?

12          A     I believe you're referring to PRMU, the unit  
13 number on the Giam (phonetic) of 583 North.

14          Q     Yes.

15          A     PRME 220058, check 2. There's an on-hire day  
16 of April 30th, off-hire date of July 3rd. We indicated  
17 no amount was due, under comments indicated first voyage  
18 paid to MPR.

19          Q     I'm actually looking down further where you  
20 show an amount due but no comments.

21          A     Okay.

22          Q     What does -- what do those entries indicate?

23          A     There's a total amount due. We didn't put a  
24 comment, but basically that meant that we owed that money  
25 to Emerald.

1 Q Does it mean it was on the self-billing  
2 report or not on the self-billing report?

3 A It was not on the self-billing report.

4 Q Was it on the claims analysis or not on the  
5 claims analysis?

6 A It was not on the claims analysis.

7 Q And if you show less than 30 days usage,  
8 that's in error and should be corrected?

9 A That's an error and it should have been  
10 corrected, yes.

11 Q Looking at page 3 of 84. And there's a large  
12 number of units that were not on a self-billing report,  
13 were not on the claims analysis, are these units that  
14 were in IQSHIP?

15 A Yes.

16 Q And is your explanation as to why they are  
17 not on the self-billing report what you said there, was  
18 an input error when the information was being put into  
19 IQSHIP?

20 A I believe that's the case.

21 Q Are you surprised by the number of units that  
22 were not in your self-billing reports?

23 A I was -- yes, I was a little surprised,  
24 especially this one voyage. I do remember seeing --  
25 there's a lot of reefers on here and I was fairly

1      surprised that a lot of these reefers did not show up.  
2      If you look at the on-hire dates, it's May 1st, May 2nd,  
3      May 3rd when we had a -- just a huge influx of equipment  
4      coming in and being utilized. So possibly through input  
5      error and keypunch error a lot of that stuff was not  
6      input correctly and, therefore, not submitted on the  
7      self-billing reports.

8                Q      Did you come up with any other explanation as  
9      to why so many units were not included?

10              A      No.

11              Q      At the conclusion of that report, page 84 of  
12      84, there's a grand total number of units, 5,482 --

13              A      Yes.

14              Q      -- that's the number of Emerald units that  
15      were on those ships; is that correct?

16              A      Yes.

17              Q      And the total is what this report at this  
18      time shows might be due and owing for -- with respect to  
19      uses of equipment not appearing on the self-billing  
20      report or the Emerald claim analysis?

21              A      That's correct.

22              Q      Would you look at Florence 14. Can you  
23      identify that?

24              A      Yes. This is another -- we didn't already do  
25      this? This isn't 7 also? Sorry.

1 serious effort in off-hiring the equipment, what were  
2 they supposed to do?

3 A Locate the equipment on the facility, advise  
4 me that they had it, and, in turn, I would advise Emerald  
5 that we were going to return the equipment to the agreed  
6 upon facilities per the contract.

7 Q And were they also to get an executed TIR  
8 upon the return to Emerald?

9 A Yes, that was the intent.

10 MR. SCHILDHORN: Off the record for a minute.

11 (Off-the-record discussion.)

12 BY MR. SCHILDHORN:

13 Q Going back to Exhibit 3, the last page,  
14 there's a grand total of units of 1,362, do you see that?

15 A Yes.

16 Q How does that compare with the figure you had  
17 in your e-mail?

18 A I state in my e-mail, today we have  
19 approximately 2,000 units, to be quite truthful, I'm not  
20 sure where I came or why I came up with that number of  
21 2,000 units.

22 Q What is this exhibit that's attached?

23 A This is a cover page for a self-billing  
24 report that we sent to Emerald in July of '02.

25 Q And this was --

1 A For a period in July of '02.

2 Q You're talking about the -- just the page  
3 with the figure of 1,364?

4 A Yes.

5 Q The pages that precede that with the  
6 equipment numbers on them --

7 A Yes.

8 Q -- what's that supposed to be?

9 A This is the -- a listing of units that we had  
10 purchased or were in the process of purchasing from  
11 Emerald, so I believe I included this in the e-mail just  
12 so they wouldn't obviously try to terminate this  
13 equipment because we were in the process of buying it.

14 Q Under the equipment rental agreement, was Sea  
15 Star under an obligation to return to certain ports  
16 equipment you no longer wanted to use?

17 A Yes.

18 Q Did there come a point in time when Emerald  
19 offered to relieve Sea Star of that obligation with  
20 respect to certain units they thought they could sell?

21 A Yes.

22 Q And, in fact, did Emerald sell units from  
23 locations other than the locations they were supposed to  
24 be returned to?

25 A Yes.

1 Q And did that effort by Emerald save Sea Star  
2 money?

3 MR. ARMSTRONG: Object to the form.

4 A Yes.

5 Q I'll show you what was marked as Bates -- I  
6 think I'm going to show it to you. Okay. It's Bates 13.

7 A I'm familiar with this, yes.

8 Q Can you identify this for me, please.

9 A It's an e-mail -- a series of e-mails, it's  
10 an e-mail to my folks -- you know, Sea Star employees  
11 discussing enclosed e-mails that Emerald representatives  
12 that were in San Juan had made some comments in some  
13 instances, so I forwarded these e-mails to our San Juan  
14 folks and our local Jacksonville folks to have them  
15 review and, you know, take notice of.

16 Q You used language that says, "This has become  
17 a very serious, critical, and sensitive issue;" is that  
18 correct?

19 A Yes.

20 Q Why was it serious, critical, and sensitive?

21 A It was serious that we wanted to get rid of  
22 the equipment, we did not want to use this equipment, we  
23 wanted it returned to Emerald. And, frankly, because of  
24 the insinuations by Emerald on the prior e-mails, I  
25 wanted to make sure that everyone understood that we did

1 not want to keep any of this equipment, we wanted to  
2 return it properly and move it over to the respective  
3 areas.

4 Q Did you receive responses to this e-mail?

5 A I can't recall.

6 Q Did you learn whether or not Emerald had  
7 stopped paying rental for equipment that was not  
8 returned?

9 A Sea Star.

10 Q I'm sorry. Yes. Did you learn that Sea Star  
11 had stopped paying rental?

12 A I can't recall the outcome of these  
13 particular units that Emerald had --

14 Q Do you know whether Sea Star was using some  
15 of the units for fences?

16 A I firsthand didn't see it. I know we were  
17 storing equipment at our facility in San Juan, but I  
18 can't be sure if it would be used as fences.

19 Q Did anyone tell you that that was an  
20 incorrect or correct statement?

21 A I really truly don't recall.

22 Q What occurred as a result of you sending this  
23 e-mail?

24 A I'd have to look at the attachments that  
25 Loraine sent. I really don't recall. I believe -- I

1 was still trying to claim that we were using and actually  
2 had been stored at the facility whether it be the  
3 showroom lot or our J lot and Marty had signed off on it.

4 Q Was this equipment that had never been used  
5 and had been sitting there, is that what this is  
6 referring to?

7 A It could have been a little of both, we used,  
8 we never used.

9 Q Right. I'll show you what's been marked as  
10 Bates 16. Did you prepare any reports regarding the  
11 number -- at the time of the MPR acquisition, regarding  
12 the number of units of equipment you thought had to be  
13 added to Sea Star?

14 A I didn't -- no, I don't recall preparing any  
15 type of report of how much more equipment we would need.

16 Q I'll show you what was marked as Bates 16.  
17 Can you identify that for me, please.

18 A Okay. I recall this.

19 Q Do you recall why you sent this e-mail?

20 A Just a reminder to our San Juan folks to help  
21 me be a little more communicative and responsive to  
22 equipment that we were going to move over to the showroom  
23 or to the J lot to return to Emerald, so, therefore, I  
24 can notify Emerald properly.

25 Q You refer -- you use the phrase, we would

1                   IN THE UNITED STATES DISTRICT COURT  
2                   MIDDLE DISTRICT OF FLORIDA  
3                   JACKSONVILLE DIVISION

4  
5                   CASE NO.: 3:04 CV-146-V-99HTS  
6  
7

8  
9                   SEA STAR LINE, LLC.,  
10                  a limited liability company,  
11                  Plaintiff,

12                 vs.  
13

14                 EMERALD EQUIPMENT LEASING,  
15                 INC., a corporation,  
16                 Defendant.

17  
18                 Deposition of LISA FLORENCE, taken on behalf  
19                 of the Plaintiff, on Thursday, January 13th, 2005,  
20                 beginning at 9:44 a.m., pursuant to Renotice of Taking  
21                 Deposition in the above-entitled action, at the offices  
22                 of Powers Reporting, 220 East Forsyth Street,  
23                 Jacksonville, Florida, as recorded by Jennifer  
24                 Alligood, a Court Reporter and Notary Public in and for  
25                 the State of Florida at Large.

26                 A-117

27                 CERTIFIED COPY

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1 A Well, of course, an agreement would be  
2 prepared and then a list of the documents or equipment  
3 that they were subleasing.

4 Q Would TIRs be prepared?

5 A A TIR would be prepared when the equipment  
6 goes out to them.

7 Q How about when it's returned by them?

8 A And also when it's returned.

9 Q And you know what I mean when I say TIR?

10 A Yeah.

11 Q Well, that makes one of us. Can you tell me  
12 what you believe a TIR to be?

13 A It's a trailer interchange receipt. It's a  
14 signed receipt. It's a document showing that the  
15 equipment has either gone out or come back in the gate.

16 Q Is your employer Sea Star Line, L.L.C?

17 A Yes.

18 Q Are you familiar with something called Sea  
19 Star Agency?

20 A Yes.

21 Q What is that, if you know?

22 A Well, the only thing I know about it is that  
23 it is an agency that handles the Puerto Rico Equipment  
24 that goes in or out the gate in Puerto Rico.

25 Q Do you distinguish in your job whether or not

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1 mark it as Florence 2, hold on. I ask this to be  
2 marked as Florence 2 and ask if you can identify it for  
3 me.

4 (Florence Exhibit Number 2 was marked for  
5 identification.)

6 Q Can you identify Florence 2?

7 A Okay. This a report that I created. It's an  
8 Excel spreadsheet and it's a list of Emerald Equipment  
9 that were on the first voyages. And what we did was go  
10 through the manifests, pull out just the Emerald  
11 Equipment and then look at our -- look at IQ Ship to  
12 see when we used this equipment a second time and then  
13 I calculated what per diem we would owe for the second  
14 trip for this equipment, from the time we used it until  
15 it was off-hired.

16 Q Okay... Looking at Florence 2 was it your job  
17 to find each and every piece of Emerald Equipment in  
18 preparing -- let me rephrase that question.

19 In preparing Florence 2 did you first attempt  
20 to determine each and every piece of Emerald Equipment  
21 that was in transit at the time of the NPR acquisition?

22 A Yes.

23 Q And is it your testimony that Florence 2  
24 would identify each and every piece of Emerald  
25 Equipment that was in transit at the time of the NPR

1 acquisition?

2 MR. ARMSTRONG: Object to the form.

3 A Yes.

4 Q Okay. You talked about calculations that you  
5 looked at and you said you looked at this then and then  
6 you looked at the second time that Sea Star used the  
7 equipment?

8 A For a booking.

9 Q So tell me what you mean when you did that,  
10 you knew it was on the ship?

11 A Right.

12 Q And then the second time you used it for a  
13 booking what did you use that date to do? How did you  
14 use that date in preparing this report?

15 A Okay. Well, for example, you'll see the  
16 column that says second trip from and there's a date,  
17 that would be the date that the equipment went out,  
18 that it was sent out on the booking.

19 Q Right.

20 A After it came back from that first trip.

21 Q Does this then show -- this report then show  
22 monies that would be owed to someone other than NPR  
23 because it shows the use after it came off the first  
24 ship?

25 MR. ARMSTRONG: Object to the form.

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1 for the last time. So it probably sat on the yard from  
2 June 24th until July 17th when it went back to Emerald.

3 Q Did IQ Ship provide the date of the return to  
4 Emerald?

5 MR. ARMSTRONG: Object to the form.

6 Q Let me rephrase that question. Were you able  
7 to get from IQ Ship the date that piece of equipment  
8 was returned to Emerald?

9 MR. ARMSTRONG: Object to the form.

10 A Yeah, usually in IQ Ship the date they would  
11 put in for the off-hire is the date it actually goes to  
12 the Emerald -- returned to them but not the last date  
13 we used it.

14 Q Can you explain that answer?

15 MR. ARMSTRONG: Object to the form.

16 A Well, for example, the equipment in  
17 Jacksonville would be sitting on the yard and then it  
18 would go over to GTS is where it would be returned for  
19 Emerald to pick it up, so when it went out the gate to  
20 GTS is usually when the equipment group would input it  
21 as an off-hire.

22 Q Let's talk a little bit about input into the  
23 IQ Ship system, you used the term off-hire?

24 A Uh-huh.

25 Q What information -- strike that.

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1 back or it could be on our side if it wasn't -- if it's  
2 not showing up on the report, I need to look and find  
3 out why and make sure it's correct in the system.

4 Q And when you've done that has the primary  
5 reason it's not been on your report been the reference  
6 number issue that you've referred to before?

7 A Yes.

8 Q I'm sorry, the release reference.

9 A Correct.

10 MR. SCHILDHORN: Let's go ahead and take a  
11 five minute break here.

12 (Brief recess.)

13 BY MR. SCHILDHORN:

14 Q At the time of the NPR acquisition, were the  
15 containers and equipment all in one spot?

16 A No.

17 Q Would you agree with me that they were all  
18 over the place, they were in ports, they were on ships,  
19 they were in inland depots?

20 A Correct.

21 Q If a container in the inland depot was  
22 repositioned from one inland depot from another inland  
23 depot at the request of Sea Star, would Sea Star have  
24 any record of that?

25 MR. ARMSTRONG: Object to the form.

1 A I don't want to guess.

2 Q Okay. Well, on the date -- whatever date it  
3 was -- on the date that you assisted in preparing this,  
4 what did you do that caused Sea Star to conclude that  
5 the equipment was returned on 7/15/02?

6 A At the time I created this document, the  
7 second page, that would have been the last move  
8 July 15th, '02, where it came in empty and sat waiting  
9 to go back to Emerald.

10 Q How do you know it came in empty and sat  
11 waiting to go back to Emerald?

12 A Because of the TIR on that date.

13 Q Are you aware of the existence of the 7/15 --

14 A Unless it's this one. It could be this 53730  
15 but I can't see the date.

16 Q When you said this may have been old has it  
17 ever been corrected?

18 A Yes, it's been updated.

19 Q Has the updated -- has the updated Rooks'  
20 response been provided to Emerald?

21 A I don't know the latest one that you have.

22 Q What's the latest one that you've prepared?

23 MR. ARMSTRONG: If you know?

24 A The last time we updated it was about three  
25 months ago, based on the last claim form that they

1 sent. We went through and reevaluated the whole thing.

2 Q Right. Did you reach a conclusion as a  
3 result of that evaluation?

4 MR. ARMSTRONG: Object to the form.

5 A Yeah, we changed a lot of data.

6 Q Did the change in data result in an amount  
7 either due to or due from Emerald?

8 MR. ARMSTRONG: Object to the form. If you  
9 know.

10 A I don't know.

11 Q Well, doesn't all these reports end up with  
12 the conclusion as to amounts owed and amounts paid?

13 A Yes, it does.

14 Q And do you recall whether the last report you  
15 did came to the conclusion as to the amounts owed as to  
16 the amounts paid?

17 MR. ARMSTRONG: Object to the form.

18 A I don't remember the amount.

19 Q But you do recall it did reflect an amount  
20 either do or owed from Emerald?

21 A Yes.

22 Q Do you recall producing that report in  
23 response to discovery, the last report that you did?

24 MR. ARMSTRONG: It has not been produced in  
25 any response to any requests for discovery because

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1           it is part work product in the ongoing litigation,  
2           and when the document is complete at the  
3           appropriate time I'm sure we'll exchange  
4           production.

5           MR. SCHILDHORN: Have you indicated a work  
6           product privilege as a -- in response to document  
7           production?

8           MR. ARMSTRONG: This is a report that we're  
9           preparing for the litigation, for your  
10          information, it is not complete. It's not a  
11          "report" that was prepared in business. It's  
12          prepared in this lawsuit at my direction and for  
13          purposes of evaluation and it's in process.

14          MR. SCHILDHORN: My only question,  
15          Mr. Armstrong, was have you notified us in any  
16          way, shape, or form that there was a report being  
17          prepared or had been prepared that you are not  
18          producing as the result of the assertion  
19          privilege?

20          MR. ARMSTRONG: There is no report that has  
21          been prepared. There is a report in the process  
22          and preparation and when it is complete then we  
23          will deal with it.

24          BY MR. SCHILDHORN:

25          Q       Lisa, have you worked on updating the Rooks'

1 report in the last 90 days?

2 MR. ARMSTRONG: Don't testify about anything  
3 that you've done for me. If you can answer that  
4 question, go ahead and answer it.

5 A Yes.

6 Q When was the last time you updated the  
7 report?

8 A I'd say within the last 60 days.

9 Q Have you updated during the month of January?

10 A No.

11 Q Did you update it within the month of  
12 December?

13 A Yes.

14 Q Do you currently have documents that you are  
15 reviewing for the purpose of updating the report?

16 A Yes.

17 Q Do you intend to update the report again  
18 within next -- strike that.

19 Are you in the process of updating the report  
20 again?

21 A Yes.

22 Q Do you anticipate a date by which you will  
23 have completed updating the report?

24 A I don't have an answer for that one.

25 Q Do you have deadline that has been imposed on

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1 you or that your boss has told you they want the report  
2 completed by?

3 A No.

4 Q In reviewing the Rooks' report since it was  
5 originally prepared, have had you found other instances  
6 where mistakes were made in the Rooks' response?

7 A Well, I wouldn't call them mistakes, but  
8 we've changed if the equipment was reused or something  
9 like that. We have changed some of the dates and  
10 numbers.

11 Q Is anyone else working with you in updating  
12 the Rooks' report?

13 MR. ARMSTRONG: Object to the form.

14 A Yes.

15 Q Who is assisting you?

16 A Well, we hired a contractor to come in to  
17 look for the documents, but as far as updating the form  
18 I'm doing that.

19 Q Who is the contractor that was hired?

20 MR. ARMSTRONG: Object. Go ahead and answer,  
21 if you know.

22 A His name is Bill Lauderdale.

23 Q Does he work for a company?

24 A No, he's a contractor.

25 Q What is his job, to the extent that you know

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1 it, what's he supposed to do?

2 A He's helping us go through boxes of TIRs to  
3 look for documentation supporting this -- the  
4 equipment.

5 Q Are these -- have these boxes of TIRs been  
6 produced?

7 A Yes, the ones pertaining to the claim have  
8 been produced.

9 Q How long has he been involved in his task?

10 A I don't remember exactly when he started.

11 Q Has it been --

12 A In the past year.

13 Q Over the past year. Does he produce reports  
14 to you?

15 A No.

16 Q Does he produce any reports at all?

17 A No.

18 Q When he reviews something does he input the  
19 information into the IQ Ship?

20 A No.

21 Q What does he do?

22 A I give him the claim form that was supplied  
23 from Emerald --

24 Q Right.

25 A -- I give him lists of the ones that we're

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1 looking for, he goes through boxes of TIRs that include  
2 Emerald Equipment and other equipment too, and he's  
3 looking for these TIRs.

4 Q And when -- if he finds them what does he do  
5 with them?

6 A He gives them to me.

7 MR. SCHILDHORN: Mr. Armstrong, is . . .

8 Mr. Lauderdale identified as a witness in this  
9 case?

10 MR. ARMSTRONG: No, he has not been  
11 identified as a witness.

12 BY MR. SCHILDHORN:

13 Q Has he been instructed to pull any TIR with  
14 respect to Emerald Equipment or only TIRs that appear  
15 on the invoices?

16 MR.. ARMSTRONG: Object to the form.

17 A Only the TIRs pertaining the date, the first  
18 time we used the equipment for a booking and the last  
19 time it was used.

20 Q And how does he know that?

21 MR. ARMSTRONG: Object to the form.

22 A Because I look it up first and give him the  
23 TIR number that I'm looking for.

24 Q Would it be accurate then to say that he's  
25 just trying to determine facts with respect to when

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1 equipment was on-hired and off-hired -- when Emerald  
2 Equipment was on-hired and off-hired?

3 MR. ARMSTRONG: Object to the form.

4 A He's trying to find our back-up documentation  
5 to support the on-hired and off-hired dates.

6 Q And that would determine what Sea Star does  
7 or does not owe under the lease, correct?

8 A Correct.

9 Q Is he being asked to give an opinion with  
10 respect to the work he's doing?

11 MR. ARMSTRONG: Object to the form.

12 A No.

13 Q And when you get these TIRs that he may find  
14 you simply input it into IQ Ship, correct?

15 A They're already in IQ Ship.

16 Q Well, with respect to Florence 6, was the  
17 subsequent usage dates already in IQ Ship?

18 A At what point?

19 Q At the point in time that the second page was  
20 created?

21 A No, it wouldn't have been in there at that  
22 time.

23 MR. SCHILDHORN: Okay. I'm going to take a  
24 two-minute break.

25 (Brief recess.)

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1 BY MR. SCHILDHORN:

2 Q Is it accurate to say that the only TIRs that  
3 he's reviewing are ones that have been produced in  
4 response to discovery?

5 MR. ARMSTRONG: Object to the form.

6 A Yes.

7 Q So --

8 MR. ARMSTRONG: Gary, Gary, I'll tell you  
9 that they have been produced or are being produced  
10 as to complete the review of the August -- what  
11 was the August amended claims that were produced  
12 in August or September. We have not -- I have not  
13 completely gone through those yet, so there is a  
14 possibility that there could be a few more TIRs in  
15 completing the review of the claim. But the TIRs,  
16 as John Evans knows, have been produced a  
17 multitude have been produced, and I'm hoping that  
18 I'm at the bitter end on those and the answer is  
19 there maybe more produced.

20 MR. SCHILDHORN: So Bill Lauderdale is  
21 looking for TIRs that have not yet been produced?

22 MR. ARMSTRONG: There's a possibility that  
23 there would be more located.

24 MR. SCHILDHORN: But is he under instruction  
25 to find only additional TIRs that support the

1 defense as opposed --

2 MR. ARMSTRONG: My instructions to him are my  
3 instructions to him. I'm just --

4 MR. SCHILDHORN: I don't mean to get into  
5 litigation strategy.

6 MR. ARMSTRONG: You asked whether all TIRs  
7 had been produced, I think that --

8 MR. SCHILDHORN: The answer is possibly not.

9 MR. ARMSTRONG: -- I've answered that.

10 MR. SCHILDHORN: You answered possibly not.

11 MR. ARMSTRONG: There maybe possibly more.

12 MR. SCHILDHORN: Okay. So here's my next  
13 question, how do we know that the universe of TIRs  
14 that are being reviewed don't include TIRs that  
15 support the Emerald claim and have not been  
16 inputted in IQ Ship?

17 MR. ARMSTRONG: I don't quite understand  
18 you're question, but I don't think it's anything  
19 that this witness can answer, but you can ask her  
20 whatever you want to ask her.

21 BY MR. SCHILDHORN:

22 Q In providing TIRs to you has Mr. Lauderdale  
23 come up with any TIRs that show additional usage of  
24 Emerald Equipment but not reflected on Emerald's  
25 invoice?

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1 MR. ARMSTRONG: Object to the form.

2 A No.

3 Q Do you know whether he's been asked to pull  
4 TIRs that may reflect additional usage of Emerald  
5 Equipment even if it does not appear on the Emerald  
6 invoice?

7 MR. ARMSTRONG: Object to the form.

8 A No.

9 Q No, he hasn't been asked to do that or no,  
10 you don't know whether he's been asked to do that?

11 MR. ARMSTRONG: Object to the form.

12 A He's only pulling the numbers that I give him  
13 for the claim forms.

14 Q And so if he -- okay. So we don't have a  
15 completely confused record let's mark as Florence 7  
16 this document.

17 (Florence Exhibit Number 7 was marked for  
18 identification.)

19 MR. ARMSTRONG: What is that? May I see  
20 that?

21 Q Lisa, I'm going to show you what's been  
22 marked as Florence 7, can you identify this document?

23 A Yes.

24 Q What is this document?

25 A This is an Excel spreadsheet I had combined

1           Q     If it was not in use -- not in use, does that  
2 equate to the same date as the off-hire date?

3           A     Not always.

4           Q     Okay. This is what I'm trying to understand,  
5 when would the off-hire date and the not-in-use date  
6 not be the same?

7                   MR. ARMSTRONG: Objection to the form.

8           Q     What's the difference? When can there be a  
9 difference between the off-hire date and the not in use  
10 date?

11                  MR. ARMSTRONG: Object to the form.

12           A     Because for example, in answer San Juan it  
13 could be out of service when it goes to the J lot, but  
14 it may not be off-hired for a week or a month until  
15 Emerald picks it up. It might be a month later.

16           Q     Do rental charges only terminate on your  
17 self-billing report when Emerald picks up a piece of  
18 equipment?

19                  MR. ARMSTRONG: Object to the form.

20           A     Yes.

21           Q     And to the extent that the self-billing  
22 report shows that charges to Emerald -- strike that.

23                  To the extent the self-billing report  
24 reflects that rental charges terminate at a date  
25 earlier than the return of the equipment to Emerald the

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